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House of Representatives

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August 3, 2010

The Honorable Glenn A. Fine
Inspector General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Mr. Inspector General,

I write to request that you investigate allegations that the Department of Justice's Civil Rights Division has engaged in racially discriminatory and politically motivated enforcement of federal voting rights laws.

As you know I have been troubled by the Department's handling of its voter intimidation lawsuit against the New Black Panther Party for Self Defense. For over a year, I have sought answers from the Department about its abrupt and unexplained dismissal of the lawsuit and there now exists bipartisan concern among members of Congress over the Department's handling of the case.¹

The Department's continued refusal to provide any legitimate reason for the dismissal has only increased suspicions that race and politics played a role in the decision. Recent allegations from a former Civil Rights Division attorney confirm my concerns that the Justice Department has adopted a policy of race-based non-enforcement of federal voting rights laws. If these allegations are true, it means that the Justice Department has become politicized and only an independent entity can effectively investigate this matter.

On July 6, 2010, J. Christian Adams, a former career Department attorney assigned to the New Black Panther Party trial team, testified before the U.S. Commission on Civil Rights about his knowledge of events surrounding the Department's May 2009 dismissal of most of its lawsuit. He also testified about his experience working in the Civil Rights Division as a Voting Section attorney.

¹ Letter from Rep. Brad Sherman, Member, U.S. House of Representatives, to The Honorable Eric Holder, Attorney General, U.S. Department of Justice (July 19, 2010) (on file with Committee on the Judiciary Minority Staff).

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August 3, 2010
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Mr. Adams testified under oath that Deputy Assistant Attorney General Julie Fernandes, a political appointee, instructed Voting Section attorneys that “cases are not going to be brought against black defendants [for] the benefit of white victims,” and “that if somebody wanted to bring these cases, it was up to the U.S. Attorney, but the Civil Rights Division wasn’t going to be bringing [them].”²

This statement provides new context to the Department’s handling of the New Black Panther Party case because it suggests that the Department’s May 2009 abandonment of the case was the result of hostility towards race-neutral enforcement of the laws and indicates a preference on the part of the Department’s political appointees for not enforcing voting rights laws against African-American defendants. A founding principle of this nation is equality under the law. That means it is unacceptable for the Justice Department to determine whether to enforce a law based upon the race of a defendant or victim.

Equally troubling are statements Mr. Adams testified Ms. Fernandes made at a Justice Department meeting on National Voter Registration Act (NVRA) enforcement decisions. The law was signed by President Clinton in 1993, and its relevant provision on voter list integrity requires states to ensure that no ineligible voters are on its voter rolls, including ineligible persons who are dead, felons, or people who have moved. Specifically, Mr. Adams testified that Ms. Fernandes spoke to a room full of “the entire Voting Section” and said of the NVRA’s voter list integrity provisions: “We have no interest in enforcing this provision of the law. It has nothing to do with increasing turnout, and we are just not going to do it.”³

I am particularly troubled by this allegation because I previously wrote the Department about this matter. On April 27, 2010, I wrote the Department about a March 9, 2010, *National Review* report that Ms. Fernandes directed Voting Section staff not to enforce Section 8 of the NVRA.⁴ On May 11, 2010, the Department responded “we can assure you that it is and will continue to be the policy of the Civil Rights Division to enforce all of the provisions of the NVRA as well as all of the other federal voting rights statutes for which the Division has enforcement authority.”⁵ Copies of both letters are attached for your convenience. The Department’s reply did not answer my specific questions of whether Ms. Fernandes actually directed the Voting Section not to enforce Section 8 and if so under what authority such a directive would be permissible.

² U.S. Commission on Civil Rights, “The New Black Panther Party Hearing (2),” 62 (July 6, 2010).

³ *Id.* at 64.

⁴ Letter from Rep. Lamar Smith, Ranking Member, Committee on the Judiciary, U.S. House of Representatives to the Honorable Eric Holder, Attorney General, U.S. Department of Justice (April 27, 2010) (on file with Committee on the Judiciary Minority Staff).

⁵ Letter from the Honorable Ron Weich, Assistant Attorney General, Office of Legislative Affairs, U.S. Department of Justice to Rep. Lamar Smith, Ranking Member, Committee on the Judiciary, U.S. House of Representatives (May 11, 2010) (on file with the Committee on the Judiciary Minority Staff).

While Ms. Fernandes' statements, if made, present troubling implications for the Division's law enforcement activities, I am troubled that contrary to the Department's assurances to me there now exists sworn testimony – from a former Department employee – that appears to contradict the Department. If Ms. Fernandes gave this directive and it has not been rescinded the Department presumably is not enforcing Section 8, which is clearly inconsistent with the Department's May 11, 2010, statement. When viewed next to Mr. Adams' testimony a reasonable observer might conclude that either the Department was not fully forthcoming in its May 11, 2010, reply or that it is not knowledgeable of significant policy directives provided by senior political appointees that contradict the Department's stated policies. Either scenario presents a serious oversight matter for Congress and should be a matter of concern to the Department's Inspector General.

I was also troubled by allegations Mr. Adams made regarding the harassment of employees. Specifically, he alleged that an employee of the Division was "relentlessly harassed by Voting Section staff for his willingness as a minority" to work on a voting rights case in which the defendant was African-American.⁶ Mr. Adams went on to testify that "the harassment of this employee . . . resulted in an investigation, an employment investigation, of the individuals involved" and "a reprimand of the individuals involved."⁷ Mr. Adams added, "[o]thers assigned to the case were harassed in other ways, such as being badgered and baited about their evangelical religious views or their political beliefs. In these instances, the victimized employee was openly assumed to espouse various political positions hostile to civil rights, simply because he worked on the case."⁸ It is offensive that employees in any work environment would be subjected to such behavior simply for doing their job. It is unacceptable that employees of the Civil Rights Division at the U.S. Department of Justice – the entity responsible for setting the national standard for protecting employees from harassment, particularly that based upon one's race or religious beliefs – would engage in the very behavior for which they prosecute others.

Last week I wrote President Obama to request that he direct the Attorney General to appoint a special counsel to review this matter. Although the Department's Office of Professional Responsibility is reviewing the conduct of the attorneys in the New Black Panther Party case, the limited scope of that office's investigatory authority, and the broad nature of these recent allegations, requires an expansive independent review of the handling of this case. This is particularly true given the Department's refusal to allow its employees to be interviewed by the Civil Rights Commission which is attempting to conduct a review of this matter. As the Department's Inspector General allegations of employee harassment and racially discriminatory or politically motivated enforcement policies should be of great concern to you.

⁶ U.S. Commission on Civil Rights, "The New Black Panther Party Hearing (2)," 57 (July 6, 2010).

⁷ *Id.*

⁸ *Id.*

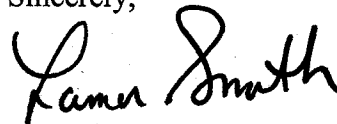
The Hon. Glenn A. Fine
August 3, 2010
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Accordingly I ask that you investigate the following matters:

1. Whether Ms. Fernandes made statements to and/or instructed Civil Rights Division staff that the Division will not initiate voting rights cases against African-American defendants for the benefit of white victims.
2. Whether Ms. Fernandes directed Civil Rights Division staff that any provision of the federal voting rights laws for which the Division has enforcement responsibility, including but not limited to Section 8 of the NVRA, would not be enforced.
3. Whether there have been any instances or reports of a Civil Rights Division employee suffering harassment based upon their race, religious beliefs, or perceived political allegiance since 2001.

With the mid-term elections only months away it is important that the many questions raised by Mr. Adams' allegations be addressed so that the American public may be assured that the Department will pursue all legitimate voting rights cases. Thank you for your attention to this matter and I look forward to your reply.

Sincerely,

A handwritten signature in black ink that reads "Lamar Smith". The signature is fluid and cursive, with the first name "Lamar" and last name "Smith" clearly distinguishable.

Lamar Smith
Ranking Member

cc: The Hon. Eric Holder, Jr.
The Hon. John Conyers, Jr.

Enclosures

JOHN CONYERS, JR., Michigan
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April 27, 2010

The Honorable Eric H. Holder, Jr.
Attorney General
U. S. Department of Justice
Washington, D.C. 20530

Dear Attorney General Holder,

Recent reports suggest that the Civil Rights Division has instructed its voting rights attorneys to cease enforcement of voter fraud provisions of the National Voter Registration Act. Such a directive, if true, represents a disturbing refusal by the Department to enforce important, common sense, anti-fraud measures designed to protect the integrity of state and federal elections.

According to a March 9, 2010, *National Review* report Julie Fernandes, Deputy Assistant Attorney General for Civil Rights, directed staff of the Division's Voting Section not to enforce Section 8 of the National Voter Registration Act.¹ Section 8 is an anti-fraud measure that calls for the regular purging of voting rolls by state and local officials to ensure that individuals who are deceased or who have moved out of a jurisdiction are not eligible to cast a ballot.

This report came just a few months after comments were made by former Voting Section chief Christopher Coates that suggested similar selective enforcement of voting rights laws. According to published reports Mr. Coates had to justify his support for the full enforcement of the voting rights laws saying:

"I believe that one of the most detrimental ways to politicize the enforcement process in the Voting Section is to enforce the provisions of the Voting Rights Act only for the protection of certain racial or ethnic minorities; or to take the position that the Voting Section is not going to enforce certain provisions of any of the voting statutes the Voting

¹ Hans von Spakovsky, "Radicalizing Civil Rights," *National Review Online*, March 9, 2010, <http://article.nationalreview.com/427240/radicalizing-civil-rights/hans-a-von-spakovsky> (last visited March 11, 2010).

Section has the responsibility to enforce. Such decisions carry with them obvious, enormous implications for partisan political struggles.”²

Mr. Coates has since transferred out of the Civil Rights Division. But his statements leave the impression that the selective enforcement of civil rights statutes is a matter of contention within the Division. If this is true such a development would be quite disconcerting, particularly as the Division is presumably in the midst of planning its enforcement efforts related to the midterm elections just seven months away. It should be noted that for Fiscal Year (FY) 2010 the Civil Rights Division received a significant budget increase that allowed approximately 100 new employees to be added to the Division’s ranks. Similarly, for FY 2011 the President has requested another large budget increase for the Division. If it is approved it will allow another 62 employees to be hired by the Division. Thus any directive not to enforce provisions of civil rights laws should not be due to a lack of resources. In fact, the Department’s own budget materials state “expanding efforts to guarantee citizen’s voting rights by addressing voting rights violations” as one justification for its FY 2011 Civil Rights Division budget request.³

Taken together these reports suggest that the Division has begun to selectively enforce voting rights statutes. In light of the troubling reports described above, I respectfully request that you respond to the following questions:

1. Did Deputy Assistant Attorney General Fernandes explicitly or implicitly direct the Voting Section staff not to enforce any section of any federal civil rights statute, including but not limited to Section 8 of the National Voter Registration Act?
2. If she did, please state the reason for such direction and the authority under which such direction is permissible.
3. Additionally, please report efforts the Voting Section has made to enforce Section 8 of the National Voter Registration Act since January 2009.

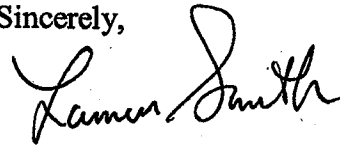
² Hans von Spakovsky, Coates Speaks as Best He Can,” *National Review Online*, Jan. 12, 2010, <http://corner.nationalreview.com/post/?q=MGExODhjOWY2NTMyN2M3ZGFjNjY0MzhhZTEyMjU5NmY=> (last visited March 15, 2010) (paraphrasing remarks delivered by Christopher Coates on Jan. 4, 2010).

³ U.S. Department of Justice, “Budget Performance Summary Fiscal Year 2011,” February 2010 (on file with Committee on the Judiciary).

At his November 16, 2010, installation ceremony Assistant Attorney General for Civil Rights Thomas Perez stated: "Our job is to enforce the civil rights laws – all the laws. Civil Rights Enforcement is not like the buffet line at the cafeteria. You can't pick and choose which laws you like, and which ones you don't. We will enforce all the laws in fair, aggressive and independent fashion, and we will use all the tools available to us."⁴ The above report about Ms. Fernandes's directive, if true, suggests that Assistant Attorney General Perez and his staff failed to live up to this commitment just a few months after Mr. Perez gave it.

Thank you for your attention to this important matter and I look forward to your reply.

Sincerely,

A handwritten signature in black ink that reads "Lamar Smith". The signature is written in a cursive, flowing style.

Lamar Smith
Ranking Member

cc: The Honorable John Conyers, Jr.

⁴ Tracy Russo, "Assistant Attorney General Tom Perez Formally Installed to Head Civil Rights Division," Nov. 16, 2009, <http://blogs.usdoj.gov/blog/archives/373> (last visited March 17, 2010).



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 11, 2010

The Honorable Lamar S. Smith
Ranking Minority Member
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Smith:

This responds to your letter, dated April 27, 2010, to the Attorney General concerning the Department of Justice's enforcement of the requirements of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg to 1973gg-10 ("NVRA").

The Department's Civil Rights Division has the responsibility for enforcement of all the civil provisions of our nation's federal voting rights statutes, including the NVRA. Congress enacted the NVRA to enhance voting opportunities for every American, and this law has made it easier for all Americans to register to vote and to maintain their registration.

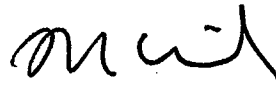
The NVRA facilitates voter registration for federal elections by allowing voters to register when they obtain driver's licenses (Section 5), by mail (Section 6), or when they obtain services from various government agencies (Section 7), and also puts controlled conditions on removals of voters from voter registration lists (Section 8). In 2009, the Voting Section remained in litigation seeking to obtain compliance with the voter registration obligations of Section 7 of the NVRA at offices serving disabled students at public universities and colleges in the State of New York. Also in 2009, the Voting Section's existing consent decree with the State of Indiana was amended to better ensure compliance with Section 8. At this time, the Division has active investigations under both Section 7 and Section 8 of the NVRA, including an investigation into whether a state is complying with Section 8. The Division is also currently in the process of drafting informal guidance concerning the requirements of Sections 5, 6, 7, and 8 of the NVRA. That guidance will be posted on the Division's website and will be widely disseminated to a variety of stakeholders, including state and local elections directors.

The Honorable Lamar S. Smith
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In response to your question about statements alleged to have been made regarding the Division's commitment to enforce federal civil rights laws, we can assure you that it is and will continue to be the policy of the Civil Rights Division to enforce all of the provisions of the NVRA as well as all of the other federal voting rights statutes for which the Division has enforcement authority.

Thank you for bringing your concerns to our attention. Please do not hesitate to contact this office if we may be of further assistance regarding this, or any other matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'm w', is positioned above the typed name.

Ronald Weich
Assistant Attorney General

cc: The Honorable John Conyers, Jr.
Chairman
Committee on the Judiciary